



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-012543

12/20/2002

garnishment of the marital community assets. The record shows that Sharyl Kuperman was never served, nor was she represented by counsel in the breach of contract and garnishment proceedings. Appellant timely filed a notice of intent to appeal and the case was sent to this court for appellate review on May 28, 2002. On May 29, the justice court issued a "judgment," again ordering that Sharyl be added as a post-judgment defendant, including the a \$500 sanction against Appellant, Appellant's wife, and Appellant's counsel. This judgment included a handwritten note reading: "Vacated – see amended judgment June 7, 2002." On June 7, 2002, the justice court issued another "judgment" with the word "amended" handwritten in the caption.

The first issue is whether the justice court exceeded its jurisdiction by amending the judgment after the trial, to include Appellant, Sharyl Kuperman. The law is quite unambiguous in such matters. A trial court may not add a defendant's spouse as a post-judgment defendant to effect compliance with the Arizona joinder requirements.<sup>1</sup> Consequently, *in personam* jurisdiction over Sharyl Kuperman was never established, for she was never named as a party.<sup>2</sup> Further, it is well established that a person cannot be brought into court and a valid judgment rendered for or against them by merely including them in the judgment.<sup>3</sup>

The second issue is whether the justice court exceeded its jurisdiction by ordering the garnishment of marital community assets, when the underlying judgment was void for failure to join Appellant's wife. A.R.S. Section 25-215(D) states in part:

[E]ither spouse may contract debts and otherwise act  
for the benefit of the community. In an action on  
such a debt or obligation the spouses **shall be sued**  
**jointly** and the debt or obligation shall be satisfied....

It is clear that Appellant could have bound the marital community when he contracted with Appellee, but to enforce this debt against said community requires that the judgment be entered against both spouses.<sup>4</sup> Accordingly, the justice court exceeded its jurisdiction by ordering the garnishment of marital community assets, for the judgment was void for failure to join Appellant's wife, Sharyl.

The third issue is whether the justice court exceeded its jurisdiction by issuing additional judgments after the case was transferred to this court. Though the justice court may vacate, modify or set aside its judgments, it loses jurisdiction of the case the instant an appeal is perfected.<sup>5</sup> Oddly, the justice court continued to issue judgments/orders after Appellant

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<sup>1</sup> *Spudnuts, Inc. v. Lane*, 139 Ariz. 35, 676 P.2d 669 (Ariz.App. 1984); Also see *Oyakawa v. Gillett*, 175 Ariz. 226, 229, 854 P.2d 1212, 1215 (Ariz.App. 1993).

<sup>2</sup> *Eng v. Stein*, 123 Ariz. 343, 599 P.2d 796 (Ariz. 1979).

<sup>3</sup> *Parada v. Parada*, 196 Ariz. 428, 999 P.2d 184 (Ariz. 2000); Also see *McDonnell v. Southern Pac. Co.*, 79 Ariz. 10, 281 P.2d 792 (Ariz.1955).

<sup>4</sup> A.R.S. §25-215(D).

<sup>5</sup> *Rodriguez v. Williams*, 104 Ariz. 280, 451 P.2d 609 (Ariz. 1969); *Lightning A Ranch Venture v.*

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perfected his appeal to this court. As a result the subsequent judgments/orders (issued May 29, 2002 and June 7, 2002) are void.

As his final issue, Appellant contends states that the justice court erred when it improperly imposed attorneys' fees against Appellant. A.R.C.P. Rule 58(g) provides that a "judgment shall not be entered until claims for attorneys' fees have been resolved and are addressed in the judgments." None of the judgments entered by the justice court included attorneys' fees, and Appellee never filed a motion to amend the judgments to include such fees, as required by law.<sup>6</sup> Hence, the justice court's awarding of attorneys' fees in this case is void.

IT IS THEREFORE ORDERED reversing and vacating the decision of the East Phoenix #2 Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the East Phoenix #2 Justice Court for all further, if any, and future proceedings, with the exception of attorney's fees and costs on appeal.

IT IS FURTHER ORDERED that counsel for Appellant submit his application and affidavit for attorney's fees an costs, and an order, to this court no later than February 10, 2003.

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*Tankersley*, 161 Ariz. 497, 779 P.2d 812 (Ariz.App. 1989); Also see *Burkhardt v. Burkhardt*, 109 Ariz. 419, 510 P.2d 735 (Ariz. 1973).

<sup>6</sup> 16 A.R.S. Rules of Civil Procedure, Rule 54(g)(2).